

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2518 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SARVODAYA KELAVANI MANDAL

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner
MR RM DESAI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/05/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner school management has challenged the show cause notice dated 27.3.1989 issued by the District Education Officer, Kheda at Nadiad calling upon the petitioner school management to show cause why the salary grant paid for P.L. Patel, Assistant Teacher in Agriculture employed by the

petitioner school management should not be recovered for the period from 1.9.1981 to 31.3.1988.

2. While admitting the petition on 13.7.1989, this Court had granted interim relief in terms of para 20(E) and (F) i.e. the respondents were restrained from taking any action pursuant to the aforesaid notice/order dated 27.3.1989 and the respondents were also directed to pay the admissible grant to the petitioner school management forthwith.

3. Ordinarily, this Court would not interfere with the show cause notice, but it is contended in the petition that the appointment of P.L. Patel was made as far back as in the year 1981 with the approval of the Competent Authority. At the time of seeking no objection certificate for issuing advertisement, the petitioner management was required to invite applications from candidates possessing Diploma in Agriculture since the appointment was to be made on the post of assistant teacher in agriculture. P.L. Patel did possess Diploma in Agriculture and he was accordingly appointed in 1981. It was in the year 1988 that an objection was raised that P.L. Patel did not earlier possess the qualification of SCC and that he had obtained the said qualification only in April, 1988 and, therefore, the grant paid by the respondent authorities for salary of P.L. Patel for the period from 1.9.1981 till 31.3.1988 should be recovered from the school management and, therefore, the aforesaid show cause notice was issued.

4. In the facts and circumstances of the case and particularly in view of the fact that the authorities themselves had required the petitioner school management to invite applications from candidates possessing Diploma in Agriculture and in view of the fact that the concerned teacher did possess the qualification in Diploma in Agriculture at the time of his appointment and he obtained the qualification of SSC Pass before the authorities raised the objection against his appointment and more particularly in view of the fact that the said objection was raised by the authorities after delay of 7 years and that this Court had granted the interim relief restraining the authorities from recovering the grant paid for salary of the said teacher (P.L. Patel) for the period from 1.9.1981 till 31.3.1988 and the said interim relief has continued for a period of 11 years, in the totality of the facts and circumstances, it would be just and proper to quash the impugned show cause notice. As per the settled legal position, even where the authorities have power to take a particular action, all

such powers are required to be exercised within reasonable time. What is reasonable period would always depend on the facts of each case. Having regard to the aforesaid peculiar facts and circumstances of the case, it must be held that the show cause notice was issued by the authorities after a gross delay of 7 years. On this short ground alone, the show cause notice deserves to be quashed and the petition deserves to be allowed.

5. The petition is accordingly allowed. The impugned show cause notice dated 27.3.1989 at Annexure 'C' to the petition is quashed and set aside.

Rule is made absolute with no order as to costs.

May 5, 2000 (M.S. Shah, J.)
sundar/-